



**ASSEMBLY AMENDMENT 3,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 772**

March 4, 2004 – Offered by Representative WIECKERT.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1, line 8: after “Program” insert “and state agency status coverage
3 under the Volunteer Health Care Provider Program regardless of applicable health
4 care liability insurance coverage”.

5 **2.** Page 6, line 16: after that line insert:

6 “**SECTION 11m.** 146.89 (4) of the statutes is amended to read:

7 146.89 (4) Volunteer health care providers who provide services under this
8 section are, for the provision of these services, state agents of the department of
9 health and family services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46. This
10 state agency status applies regardless of whether the volunteer health care provider
11 has coverage under a policy of health care liability insurance that would extend to
12 services provided by the volunteer health care provider under this section; and the

1 limitations under s. 895.46 (1) (a) on the payment by the state of damages and costs
2 in excess of any insurance coverage applicable to the agent and on the duty of a
3 governmental unit to provide or pay for legal representation do not apply. Any policy
4 of health care liability insurance providing coverage for services of a health care
5 provider may exclude coverage for services provided by the health care provider
6 under this section.

7 **SECTION 11r.** 895.46 (1) (a) of the statutes is amended to read:

8 895.46 (1) (a) If the defendant in any action or special proceeding is a public
9 officer or employee and is proceeded against in an official capacity or is proceeded
10 against as an individual because of acts committed while carrying out duties as an
11 officer or employee and the jury or the court finds that the defendant was acting
12 within the scope of employment, the judgment as to damages and costs entered
13 against the officer or employee except as provided in s. 146.89 (4) in excess of any
14 insurance applicable to the officer or employee shall be paid by the state or political
15 subdivision of which the defendant is an officer or employee. Agents of any
16 department of the state shall be covered by this section while acting within the scope
17 of their agency. Regardless of the results of the litigation the governmental unit, if
18 it does not provide legal counsel to the defendant officer or employee, shall pay
19 reasonable attorney fees and costs of defending the action, unless it is found by the
20 court or jury that the defendant officer or employee did not act within the scope of
21 employment. ~~The Except as provided in s. 146.89 (4), the~~ duty of a governmental unit
22 to provide or pay for the provision of legal representation does not apply to the extent
23 that applicable insurance provides that representation. If the employing state
24 agency or the attorney general denies that the state officer, employee or agent was
25 doing any act growing out of or committed in the course of the discharge of his or her

1 duties, the attorney general may appear on behalf of the state to contest that issue
2 without waiving the state's sovereign immunity to suit. Failure by the officer or
3 employee to give notice to his or her department head of an action or special
4 proceeding commenced against the defendant officer or employee as soon as
5 reasonably possible is a bar to recovery by the officer or employee from the state or
6 political subdivision of reasonable attorney fees and costs of defending the action.
7 The attorney fees and expenses shall not be recoverable if the state or political
8 subdivision offers the officer or employee legal counsel and the offer is refused by the
9 defendant officer or employee. If the officer, employee or agent of the state refuses
10 to cooperate in the defense of the litigation, the officer, employee or agent is not
11 eligible for any indemnification or for the provision of legal counsel by the
12 governmental unit under this section.”

13 **3.** Page 7, line 3: after that line insert:

14 “(2m) HEALTH CARE LIABILITY INSURANCE. The treatment of section 146.89 (4) of
15 the statutes first applies to health care liability insurance policies issued or renewed
16 on the effective date of this subsection.”

17 (END)